

AMENDED IN SENATE JULY 17, 2003

AMENDED IN SENATE JULY 3, 2003

AMENDED IN ASSEMBLY JUNE 2, 2003

AMENDED IN ASSEMBLY APRIL 22, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 491

Introduced by Assembly Member Diaz

(Principal coauthor: Senator Alarcon)

(Coauthor: Assembly Member Cohn)

(Coauthor: Senator Romero)

February 14, 2003

An act to add Article 3 (commencing with Section 89730) to Chapter 6 of Part 55 of the Education Code, and to amend ~~Sections 10295, 10430, and~~ Section 12100.5 of the Public Contract Code, relating to the California State University.

LEGISLATIVE COUNSEL'S DIGEST

AB 491, as amended, Diaz. California State University: information technology projects.

(1) Existing law establishes the California State University and its various campuses under the administration of the Trustees of the California State University.

This bill would enact a comprehensive statutory scheme relating to information technology projects of the university.

The bill would require any information technology project of the university, *as defined*, that exceeds \$1,000,000 in direct or related costs

to ~~receive independent project oversight and prior approval from~~ *be overseen, from its inception through its implementation, by an independent auditor appointed by the Director of Finance.* The bill would require ~~an approved project~~ *a systemwide information technology project of the university that is approved on or before June 30, 2009, and that exceeds \$20,000,000 in direct or indirect costs,* to be submitted to the Governor for consideration and inclusion in the Governor's Budget, and would require the project to be reviewed through the annual budget process.

The bill would generally require the university to take systematic measures to analyze and justify the costs related to information technology projects.

The bill would require the trustees to disclose, prior to entering into a contract with any private vendor, any donations to the university, or to any of the campuses or auxiliary organizations of the university, made by that vendor for up to one year before the date on which the contract is to be executed.

The bill would require the university to take prescribed actions to safeguard electronic records that contain confidential student information.

~~(2) Existing law, with specified exceptions, provides that all contracts entered into by any state agency for the hiring or purchase of goods and services, as defined, are void unless approved by the Department of General Services. Existing law exempts the California State University, as well as transactions entered into by the trustees, or pursuant to the California State University Contract Law, from this requirement.~~

~~This bill would delete this exemption, insofar as it applies to information technology projects of the California State University that are within the scope of the bill, thereby subjecting the university to this requirement with respect to those projects.~~

~~(3) Existing law, with specified exemptions, including the acquisition of information technology goods and services, regulates the procurement of materials, supplies, equipment, and services by state agencies. These provisions do not apply to the Regents of the University of California or to the Trustees of the California State University.~~

~~The bill would delete the provision that exempts the Trustees of the California State University from these requirements, insofar as it applies to information technology projects of the California State~~



~~University that are within the scope of the bill, thereby subjecting the trustees to these requirements with respect to these projects.~~

(4) Existing law generally requires that all state agency contracts for the acquisition of information technology goods or services, whether by lease or purchase, be made by or under the supervision of the Department of General Services. Existing law exempts the Trustees of the California State University, as well as the governing bodies of the other segments of public postsecondary education, from this supervision, but also requires the trustees to develop policies and procedures, to be maintained in the state university administrative manual, that further the pertinent legislative policies for contracting, but that are without the involvement of the Director of Finance, the Director of General Services, the Department of Finance, or the Department of General Services.

This bill would instead require the trustees to develop these policies and procedures in conjunction with the Director of Finance and in consultation with the Legislative Analyst, or in conjunction with the Department of Finance and in consultation with the Legislative Analyst's Office.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The California State University (CSU) failed to conduct a
4 comprehensive systemwide cost/benefit or needs analysis prior to
5 implementing the multimillion dollar Common Management
6 System (CMS) computer data project.

7 (b) CSU failed to both establish a business plan or a systemwide
8 funding plan for CMS.

9 (c) CSU procured CMS-related vendor services using
10 sole-source contracts.

11 (d) CSU is funding the ~~six hundred sixty-two million dollar~~
12 ~~(\$662,000,000)~~ *four hundred fifty million dollar (\$450,000,000)*
13 CMS project with resources that could otherwise be devoted to
14 supporting classroom instruction, student services, and libraries.

15 (e) CSU's flexible budget framework exempts it from many
16 legislative oversight mechanisms, and the CMS project was not

1 subject to the same legislative scrutiny other state information
2 technology projects undergo.

3 (f) CSU's flexible budgeting environment also allows it to
4 make expenditures that may be contrary to priorities established
5 by the Legislature.

6 SEC. 2. Article 3 (commencing with Section 89730) is added
7 to Chapter 6 of Part 55 of the Education Code, to read:

8

9

Article 3. Information Technology

10

11 89730. (a) It is the intent of the Legislature to ensure that
12 future information technology projects of the university are
13 appropriate expenditures of state resources.

14 (b) (1) This article applies to, but is not necessarily limited to,
15 any information technology project of the university that exceeds
16 one million dollars (\$1,000,000) in direct or related costs. ~~An~~ Any
17 information technology project to which this article applies shall
18 ~~receive independent project oversight and prior approval from the~~
19 ~~Director of Finance.~~

20 ~~(2) The~~ *be overseen, from its inception through its*
21 *implementation, by an independent auditor, to be appointed by the*
22 *Director of Finance. The independent auditor shall ensure*
23 *compliance with any applicable statutes, regulations, policies, or*
24 *procedures adopted to oversee the information technology*
25 *projects of the university.*

26 (2) *For any systemwide information technology project of the*
27 *university that is approved by the trustees on or before June 30,*
28 *2009, and that exceeds twenty million dollars (\$20,000,000), in*
29 *direct or related costs, the Department of Finance, upon approving*
30 *an information technology project pursuant to this article, shall*
31 *submit the project proposal to the Governor for consideration and*
32 *inclusion in the Governor's Budget. An information technology*
33 *project to which this article paragraph applies shall be reviewed*
34 *through the annual budget process by the Legislative Analyst's*
35 *Office and the budget committees of the Legislature.*

36 ~~(3) Project implementation oversight shall occur after a statute~~
37 ~~is enacted that grants implementation oversight authority to a state~~
38 ~~entity in place of the existing implementation oversight authority~~
39 ~~of the Department of General Services.~~



~~(c) For the purposes of this section, the trustees, in conjunction with the Department of Finance, and in consultation with the Legislative Analyst's Office, shall develop and adopt both of the following as regulations:~~

~~(1) Provision for~~

(3) As used in this subdivision, "systemwide" refers to information technology projects that are initiated at the systemwide level of the university. This article does not apply to information technology projects that are initiated at the campus level. The university may not avoid the requirements of this article by dividing a systemwide project into campus-level components.

(c) For the purposes of this section, the trustees shall accomplish both of the following:

(1) Conduct a feasibility study that includes, but is not necessarily limited to, all of the following:

(A) A description of the project.

(B) A clearly defined statement of the business problems or opportunities being addressed by the proposed project.

(C) An economic analysis of the cost of the proposed project, as compared with the costs of the current method of operation.

(D) A statement of the specific functionality that is necessary to achieve the documented needs of the university.

(E) Identification of the increased productivity of staff and reduced operational costs that would be attributable to the project.

~~(2) Provision for a cost-benefit~~ *Complete a cost-benefit analysis that includes, but is not necessarily limited to, all of the following:*

(A) The relative merits of the project, including, but not necessarily limited to, compatibility with existing or future systems or programs.

(B) Any projected cost, including in-kind costs, upgrades, integrated costs, maintenance costs, schedules, capability or performance constraints, and savings.

(C) Whether the new outsourcing project could be done by current technical staff if they are provided with sufficient additional training.

(D) All identified funding sources for the project, including campus costs.

(E) Potential risks associated with the project, and a description of any ongoing efforts to reduce risks. This part of the cost-benefit analysis shall address protections, such as payment holdbacks and

1 *performance bond requirements, to ensure that the development,*
2 *implementation, and integration of the project meets the project*
3 *specifications and goals; warranty provisions; liquidated damage*
4 *provisions; and letters of credit and other special insurance*
5 *requirements.*

6 89731. *Notwithstanding any other provision of law:*

7 (a) *No later than March 31, 2004, the Trustees of the California*
8 *State University shall adopt appropriate regulations, policies, and*
9 *procedures that are consistent with the 30 recommendations of*
10 *Report 2002-110, issued in March 2003 by the Bureau of State*
11 *Audits. The trustees shall continuously abide by, and enforce, these*
12 *regulations, policies, and procedures.*

13 (b) *If the independent auditor appointed pursuant to Section*
14 *89730 determines that the trustees are not in compliance with*
15 *subdivision (a), the information technology projects of the*
16 *university shall immediately be subject to the oversight authority*
17 *of the Department of General Services.*

18 89733.7. *To ensure that they use recommended practices in*
19 *procurement, the trustees shall ~~plan project procurements to share~~*
20 *~~risks with vendors and consultants, such as by allowing them to~~*
21 *~~propose their solutions and by structuring contracts to protect the~~*
22 *~~university's documented financial and programmatic interests,~~*
23 *~~including provisions to pay only after deliverables have been~~*
24 *~~tested and accepted.~~ evaluate sharing risks with vendors and*
25 *consultants during the project planning process, and shall apply*
26 *appropriate risk-sharing strategies when these are deemed*
27 *necessary in the feasibility study to ensure the long-term success*
28 *of the project.*

29 89734.1. *The trustees shall provide ~~quarterly~~ cost and*
30 *progress reports to the Director of Finance, the Legislative*
31 *Analyst's Office, and the chairs of the appropriate legislative*
32 *policy and fiscal committees. These reports shall be provided at*
33 *least twice during each fiscal year.*

34 89734.3. *To ensure that potential conflicts of interest and*
35 *prohibited uses of nonpublic information are adequately*
36 *addressed, the trustees shall develop guidelines to ensure*
37 *compliance with Section 19990 of the Government Code.*

38 89734.7. *Prior to entering into a contract with any private*
39 *vendor, the trustees shall disclose any donations to the university,*
40 *or to any of the campuses or auxiliary organizations of the*

1 university, made by that vendor for up to one year before the date
2 on which the contract is to be executed. The trustees shall also
3 disclose any donations to the university, or to its campuses or
4 auxiliary organizations, made by that vendor during the term of the
5 contract. The trustees shall provide ~~quarterly~~ reports to the
6 Secretary of State, the Director of Finance, and the Legislative
7 Analyst's Office with respect to these donations. *These reports*
8 *shall be provided at least twice during each fiscal year.*

9 89735.5. In order to ensure the privacy of student and
10 employee records, the university shall comply with all
11 requirements of the Information Practices Act of 1977 (Chapter 1
12 (commencing with Section 1798) of Title 1.8 of Part 4 of Division
13 3 of the Civil Code), with respect to persons involved in the design,
14 development, operation, disclosure, or maintenance of
15 electronically stored personnel records or confidential student
16 records, as well as with respect to any contractor and any employee
17 of a contractor with access to this information.

18 ~~SEC. 3. Section 10295 of the Public Contract Code is~~
19 ~~amended to read:~~

20 ~~10295. (a) All contracts entered into by any state agency for~~
21 ~~(1) the acquisition of goods or elementary school textbooks, (2)~~
22 ~~services, whether or not the services involve the furnishing or use~~
23 ~~of goods or are performed by an independent contractor, (3) the~~
24 ~~construction, alteration, improvement, repair, or maintenance of~~
25 ~~property, real or personal, or (4) the performance of work or~~
26 ~~services by the state agency for or in cooperation with any person,~~
27 ~~or public body, are void unless and until approved by the~~
28 ~~department. Every contract shall be transmitted with all papers,~~
29 ~~estimates, and recommendations concerning it to the department~~
30 ~~and, if approved by the department, shall be effective from the date~~
31 ~~of the approval.~~

32 ~~(b) This section applies to any state agency that by general or~~
33 ~~specific statute is expressly or impliedly authorized to enter into~~
34 ~~transactions referred to in this section.~~

35 ~~(c) This section does not apply to any of the following:~~

36 ~~(1) (A) Any transaction entered into by the Board of~~
37 ~~Governors of the California Community Colleges, or by a~~
38 ~~department under the State Contract Act.~~

39 ~~(B) Any transaction entered into by the Trustees of the~~
40 ~~California State University, or by a department under the~~

~~California State University Contract Act, with the exception of transactions relating to information technology projects within the scope of Article 3 (commencing with Section 89730) of Chapter 6 of Part 55 of the Education Code. Implementation oversight of an information technology project of the California State University to which Article 3 (commencing with Section 89730) of Chapter 6 of Part 55 of the Education Code applies shall occur after a statute is enacted that grants implementation oversight authority to a state entity in place of the existing implementation oversight authority of the Department of General Services.~~

~~(2) Any contract of a type specifically mentioned and authorized to be entered into by the Department of Transportation under Section 14035 or 14035.5 of the Government Code, Sections 99316 to 99319, inclusive, of the Public Utilities Code, or the Streets and Highways Code.~~

~~(3) Any contract entered into by the Department of Transportation that is not funded by money derived by state tax sources but, rather, is funded by money derived from federal or local tax sources.~~

~~(4) Any contract entered into by the Department of Personnel Administration for state employee benefits, occupational health and safety, training services, or combination thereof.~~

~~(5) Any contract entered into by the Legislature.~~

~~(6) Any contract entered into under the authority of Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.~~

~~SEC. 4. Section 10430 of the Public Contract Code, as amended by Section 1 of Chapter 1122 of the Statutes of 2002, is amended to read:~~

~~10430. This chapter does not apply to any of the following:~~

~~(a) (1) The Regents of the University of California.~~

~~(2) The Trustees of the California State University, with the exception of Section 10365.5, Article 8 (commencing with Section 10410), Article 9 (commencing with Section 10420), and transactions relating to information technology projects within the scope of Article 3 (commencing with Section 89730) of Chapter 6 of Part 55 of the Education Code.~~

~~(b) (1) Transactions covered under Chapter 3 (commencing with Section 12100), except that Sections 10365.5, 10410, and 10411 shall apply to all transactions under that chapter.~~

1 ~~(2) Notwithstanding paragraph (1), Section 10365.5 shall not~~
2 ~~apply to incidental advice or suggestions made outside of the scope~~
3 ~~of a consulting services contract.~~

4 ~~(c) Except as otherwise provided in this chapter, any entity~~
5 ~~exempted from Section 10295. However, the Board of Governors~~
6 ~~of the California Community Colleges shall be governed by this~~
7 ~~chapter, except as provided in Sections 10295, 10335, and 10389.~~

8 ~~(d) Transactions covered under Chapter 10 (commencing with~~
9 ~~Section 4525) of Division 5 of Title 1 of the Government Code.~~

10 ~~(e) Except as provided for in subdivision (c), members of~~
11 ~~boards or commissions who receive no payment other than~~
12 ~~payment for each meeting of the board or commission, payment~~
13 ~~for preparatory time, and payment for per diem.~~

14 ~~(f) The emergency purchase of protective vests for correctional~~
15 ~~peace officers whose duties require routine contact with state~~
16 ~~prison inmates. This subdivision shall remain operative only until~~
17 ~~January 1, 1987.~~

18 ~~(g) Spouses of state officers or employees and individuals and~~
19 ~~entities that employ spouses of state officers and employees, that~~
20 ~~are vendored to provide services to regional center clients pursuant~~
21 ~~to Section 4648 of the Welfare and Institutions Code if the vendor~~
22 ~~of services, in that capacity, does not receive any material financial~~
23 ~~benefit, distinguishable from the benefit to the public generally,~~
24 ~~from any governmental decision made by the state officer or~~
25 ~~employee.~~

26 ~~SEC. 5.—~~

27 *SEC. 3.* Section 12100.5 of the Public Contract Code is
28 amended to read:

29 12100.5. (a) The Regents of the University of California, the
30 Trustees of the California State University, and the Board of
31 Governors of the California Community Colleges shall not be
32 subject to this chapter except as provided in subdivision (b).

33 (b) (1) The trustees shall develop policies and procedures in
34 the State University Administrative Manual that further the
35 legislative policies for contracting expressed in this chapter in
36 conjunction with the Director of Finance and in consultation with
37 the Legislative Analyst, or in conjunction with the Department of
38 Finance and in consultation with the Legislative Analyst's Office.

39 (2) The board of governors shall adopt policies and procedures
40 in its administrative manual that further the legislative policies for

1 contracting expressed in this chapter, but without the involvement
2 of the Director of Finance and the Director of General Services or
3 the Department of Finance and the Department of General
4 Services.

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